APPENDIX A — ORDER AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT DATED AND FILED JANUARY 6, 1999

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

No, 97-1254
(D.C. No. 97-AP-266)
(District of Colorado)

MARATHON OIL COMPANY, an Ohio company,

Plaintiff-Appellant,

v.

BRUCE BABBITT, Secretary of the United States Department of the Interior; UNITED STATES DEPARTMENT OF THE INTERIOR; BUREAU OF LAND MANAGEMENT,

Defendants-Appellees,

COLORADO ENVIRONMENTAL COALITION, a non-profit Colorado corporation; WILDERNESS SOCIETY, a non-profit District of Columbia corporation,

Defendants-Intervenors-Appellees.

Appendix A

ORDER AND JUDGMENT*

Before **PORFILIO**, **HOLLOWAY**, and **HENRY**, Circuit Judges.

Marathon Oil Company appeals the district court's dismissal of its action filed to obtain an order directing the Secretary of the Interior to restore lands once designated for federal oil and gas leasing but later removed for environmental review. The district court held Marathon lacked standing, having alleged no redressable injury. ***Marathon Oil Co. v. Babbitt***, 966 F. Supp. 1024 (D. Colo. 1997). Although the district court's conclusion is unimpeachably supported by a venerable line of Tenth Circuit precedent, Marathon seeks to avoid that authority by recasting this case as an effort to curtail the Secretary's "unlimited power" in executive decision-making. We affirm substantially for the reasons given by the district court.

The district court correctly relied on ***Ash Creek Mining Co. v. Lujan***, 969 F.2d 868 (10th Cir. 1992); ***Wyoming ex rel. Sullivan v. Lujan***, 969 F.2d 877 (10th Cir. 1992); ***Mount Evans Co. v. Madigan***, 14 F.3d 1444 (10th Cir. 1994); and ***Baca v. King***, 92 F.3d 1031 (10th Cir. 1996), each holding plaintiffs lacked standing because their injuries were not redressable by a favorable decision. The district court found Marathon's position indistinguishable from that

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

of ***Baca***, ***Ash Creek Mining***, and ***Wyoming*** and dismissed the action, notwithstanding Marathon's insistence ***Lujan v. Defenders of Wildlife***, 504 U.S. 555 (1992), would permit jurisdiction in its case.

On appeal, Marathon argues the district court did not give proper consideration to the facts pled in its complaint or contained in the administrative record, all of which must be construed in plaintiff's favor. Marathon insists "the facts pled by Marathon establish that Marathon's injury will 'likely' be redressed by a declaration of the challenged policy's illegality."

The crux of Marathon's argument is the district court applied the wrong redressability test, albeit derived from our cases, but ignorant of Justice Scalia's plurality opinion in ***Defenders of Wildlife***, as fully refined and articulated in the unanimous holding of ***Bennett v. Spear***, 520 U.S. 154, 117 S. Ct. 1154 (1997). Marathon urges ***Defenders*** and ***Bennett*** have articulated a less stringent redressability test which does not require as direct an injury to establish standing as our prior cases have dictated. We disagree.

Both ***Defenders*** and ***Bennett*** are Endangered Species Act (ESA) cases in which the Court sought to delimit the standing provision within that statutory scheme. In ***Defenders***, noting standing requirements are "not mere pleading requirements but rather an indispensable part of the plaintiff's case," 112 S. Ct. at 2136, each element requiring support in the same way as plaintiff would bear any other burden of proof, the Court also observed the burden is different when plaintiff is himself the object of

the injury and when "plaintiff's asserted injury arises from the government's allegedly unlawful regulation (or lack of regulation) of *someone else*, much more is needed." ***Id.*** at 2137. The court concluded plaintiffs could not establish injury because even if the district court had issued the orders requested, they would not have bound other agencies involved in the alleged illegal action. In that case, only the various funding agencies could ultimately implement the order, and none was a party to the action or provided enough funding in any case. We agree with the district court's conclusion this case is inapposite.

Bennett, again addressing the particular facts presented under the ESA's standing provision, held that injuries alleged by two Oregon irrigation districts and operators of two ranches within the districts were within the ESA's zone of interest permitting citizen suits. The harm alleged in ***Bennett*** was economic, deriving from a challenge to the Secretary's restricting water flows essential to their operations but harmful to the Lost River Sucker and Shortnose Sucker. The Court read broadly the "any person" threshold for standing under the ESA, permitting those challenging and those protecting an environmental action to be viewed within the same zone of interest. Given plaintiffs' allegations, the Court found the injury alleged was fairly traceable to the agency's action. Because of the absence of economic harm in this case, however, we believe ***Bennett*** is not germane.

The jurisprudence of standing "is a highly case-specific endeavor, turning on the precise allegations of the parties seeking relief." ***Wyoming***, 969 F.2d at 882. We are satisfied,

however, this case falls in step with its Tenth Circuit precursors. ***See also State of Utah v. Babbitt***, 137 F.3d 1193 (10th Cir. 1998).

AFFIRMED.

ENTERED FOR THE COURT

John C. Porfilio
Circuit Judge

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO ON MOTION TO DISMISS DATED AND FILED JUNE 16, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 97-AP-266

MARATHON OIL COMPANY, an Ohio corporation,

Plaintiff,

v.

BRUCE BABBITT, SECRETARY OF THE UNITED STATES DEPARTMENT OF THE INTERIOR; the UNITED STATES DEPARTMENT OF THE INTERIOR, and the BUREAU OF LAND MANAGEMENT,

Defendants,

v.

COLORADO ENVIRONMENTAL COALITION, a non-profit Colorado corporation, and THE WILDERNESS SOCIETY, a non-profit District of Colombia corporation,

Intervenor-Defendants.

ORDER ON MOTION TO DISMISS

Appendix B

KANE, J.

Marathon Oil Company asserts the Defendants have breached their legal duties in depriving it of its right to bid competitively on oil and gas lease tracts which ought, under governing law and the Secretary of the Department of Interior's (the "Secretary's") own regulations, to have been offered for sale.

Pending are the Federal Defendants' motion to dismiss and Marathon's brief in support of its right to conduct deposition discovery. I grant the Defendants' motion and therefore do not reach the issue of additional discovery.

The Defendants assert the only way in which Marathon's grievance can be redressed is by this court issuing an order requiring the Secretary to offer the disputed parcels of land for competitive oil and gas leasing under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 *et seq.* They move to dismiss the case under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) on the grounds that Marathon lacks standing because this court cannot redress its claim.

The Defendants rely on four recent Tenth Circuit opinions, *Ash Creek Mining Company v. Lujan*, 969 F.2d 868 (10th Cir. 1992); *Wyoming ex rel. Sullivan v. Lujan* 969 F.2d 877 (10th Cir. 1992); *Mount Evans Company v. Madigan*, 14 F.3d 1444 (10th Cir. 1994); and *Baca v. King*, 92 F.3d 1031 (10th Cir. 1996). They assert the Tenth Circuit has repeatedly held in these cases that "federal courts do not have the power to order competitive leasing. By law

that discretion is vested absolutely in the federal government's executive branch and not in its judiciary." *See Wyoming*, 969 F.2d at 882.

Marathon argues the Supreme Court opinion in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), on which the Tenth Circuit relied in the *Ash Creek* and *Wyoming* cases, provides a basis of redressability, notwithstanding the court of appeals' holdings. I disagree. The Court remarked that, where the government action or inaction complained of was directed at a third party not before the court, rather than at the complainant before the court, the complainant's claim would frequently fail for lack of redressability because the court would have no control over the third party as a practical matter. *Id.*, at 561-62. It was not the Supreme Court's holding, however, that there is a difference between a third party complaining of a government action directed at someone else and a first party directly affected where all the necessary parties are before the court.

For standing purposes, Marathon's position here is indistinguishable from that of the plaintiff in *Ash Creek* who complained about the public land being devoted to some other use due to a previous agreement between the government and several other parties. Likewise, Marathon's status is not dissimilar to that of the plaintiff in *Wyoming*, where the state sought to challenge the Secretary's exchange of federally owned coal in Wyoming for a conservation easement in a national park.

Nor, for jurisdictional purposes, does Marathon differ from the plaintiff in *Baca*, the most recent of the Tenth Circuit decisions on which the Defendants rely, and which itself cited *Lujan v. Defenders of Wildlife*. Baca, a lessee of federal land that the government exchanged for private land in a monument and conservation area, challenged the land exchange which resulted in his loss of grazing privileges. The appeals court cited the statement in *Lujan v. Defenders of Wildlife*, that the constitutional limitation on federal court jurisdiction in Article III requires:

> (1) that the plaintiff "suffered an 'injury in fact' . . . (2) that the injury is " 'fairly . . . trac[able] to the challenged action of the defendant . . .' " and (3) that it is " 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.' "

Baca, 92 F.3d at 1035 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. at 560-61) (citations and some internal quotation marks omitted).

Assuming satisfaction of the first two requirements for standing, Marathon has not shown a "substantial likelihood" that its injury will be redressed by a favorable decision. *See Baca*, 92 F.3d at 1036. Only an order of this court compelling the executive branch to make land available for competitive leasing under the Mineral Leasing Act would likely redress Marathon's claimed injuries. This, I do not have the power to do. I therefore dismiss the case for lack of standing. Accordingly,

Appendix B

IT IS ORDERED THAT the Federal Defendants' Motion to Dismiss is GRANTED and this case is DISMISSED with each party to pay its own costs.

Dated this 16 day of June, 1997, at Denver, Colorado.

s/ John L. Kane, Jr.
JOHN L. KANE, JR.
U.S. SENIOR DISTRICT COURT
JUDGE

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT DENYING PETITION FOR REHEARING DATED AND FILED MARCH 9, 1999

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 97-1254

MARATHON OIL COMPANY, an Ohio company,

Plaintiff – Appellant,

v.

BRUCE BABBITT, Secretary of the United States Department of the Interior; UNITED STATES DEPARTMENT OF THE INTERIOR; BUREAU OF LAND MANAGEMENT;

Defendant – Appellee,

COLORADO ENVIRONMENTAL COALITION, a non-profit Colorado corporation; WILDERNESS SOCIETY, a non-profit District of Columbia corporation,

Defendants-Intervenors-Appellee.

ORDER

Filed March 9, 1999

Appendix C

Before **PORFILIO**, **HOLLOWAY**, and **HENRY**, Circuit Judges.

Appellant's petition for rehearing is denied by the panel that rendered the decision.

The suggestion for rehearing en banc was transmitted to all of the judges of the court who are in regular active service as required by Fed. R. App. P. 35. No member of the panel and no judge in regular active service on the court requested that the court be polled on rehearing en banc so the suggestion for rehearing is also denied.

Entered for the Court
PATRICK FISHER, Clerk of Court

by: s/ Audrey F. Weigel
Deputy Clerk

APPENDIX D — RELEVANT STATUTES

43 U.S.C. § 1701

§ 1701. Congressional declaration of policy

(a) The Congress declares that it is the policy of the United States that —

(1) the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest;

(2) the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts;

(3) public lands not previously designated for any specific use and all existing classifications of public lands that were effected by executive action or statute before October 21, 1976, be reviewed in accordance with the provisions of this Act;

(4) the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action;

(5) in administering public land statutes and exercising discretionary authority granted by them, the Secretary be required to establish comprehensive rules and regulations after considering the views of the general public; and to structure adjudication procedures to assure adequate third party participation, objective administrative review of initial decisions, and expeditious decisionmaking;

(6) judicial review of public land adjudication decisions be provided by law;

(7) goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law;

(8) the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use;

(9) the United States receive fair market value of the use of the public lands and their

resources unless otherwise provided for by statute;

(10) uniform procedures for any disposal of public land, acquisition of non-Federal land for public purposes, and the exchange of such lands be established by statute, requiring each disposal, acquisition, and exchange to be consistent with the prescribed mission of the department or agency involved, and reserving to the Congress review of disposals in excess of a specified acreage;

(11) regulations and plans for the protection of public land areas of critical environmental concern be promptly developed;

(12) the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands; and

(13) the Federal Government should, on a basis equitable to both the Federal and local taxpayer, provide for payments to compensate States and local governments for burdens created as a result of the immunity of Federal lands from State and local taxation.

(b) The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law.

* * *

43 U.S.C. § 1702

§ 1702. Definitions

Without altering in any way the meaning of the following terms as used in any other statute, whether or not such statute is referred to in, or amended by, this Act, as used in this Act —

(a) The term "areas of critical environmental concern" means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.

(b) The term "holder" means any State or local governmental entity, individual, partnership, corporation, association, or other business entity receiving or using a right-of-way under subchapter V of this chapter.

(c) The term "multiple use" means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

(d) The term "public involvement" means the opportunity for participation by affected citizens in rulemaking, decisionmaking, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.

(e) The term "public lands" means any land and interest in land owned by the United States within the several States

and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except —

(1) lands located on the Outer Continental Shelf; and

(2) lands held for the benefit of Indians, Aleuts, and Eskimos.

(f) The term "right-of-way" includes an easement, lease, permit, or license to occupy, use, or traverse public lands granted for the purpose listed in subchapter V of this chapter.

(g) The term "Secretary", unless specifically designated otherwise, means the Secretary of the Interior.

(h) The term "sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.

(i) The term "wilderness" as used in section 1782 of this title shall have the same meaning as it does in section 1131(c) of Title 16.

(j) The term "withdrawal" means withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for

a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than "property" governed by the Federal Property and Administrative Services Act, as amended (40 U.S.C. 472) from one department, bureau or agency to another department, bureau or agency.

(k) An "allotment management plan" means a document prepared in consultation with the lessees or permittees involved, which applies to livestock operations on the public lands or on lands within National Forests in the eleven contiguous Western States and which:

(1) prescribes the manner in, and extent to, which livestock operations will be conducted in order to meet the multiple-use, sustained-yield, economic and other needs and objectives as determined for the lands by the Secretary concerned; and

(2) describes the type, location, ownership, and general specifications for the range improvements to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and

(3) contains such other provisions relating to livestock grazing and other objectives found by the Secretary concerned to be consistent with the provisions of this Act and other applicable law.

(*l*) The term "principal or major uses" includes, and is limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.

(m) The term "department" means a unit of the executive branch of the Federal Government which is headed by a member of the President's Cabinet and the term "agency" means a unit of the executive branch of the Federal Government which is not under the jurisdiction of a head of a department.

(n) The term "Bureau" means the Bureau of Land Management.

(*o*) The term "eleven contiguous Western States" means the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(p) The term "grazing permit and lease" means any document authorizing use of public lands or lands in National Forests in the eleven contiguous western States for the purpose of grazing domestic livestock.

* * *

Appendix D

43 U.S.C. § 1711

§ 1711. Continuing inventory and identification of public lands; preparation and maintenance

(a) The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values. The preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change of the management or use of public lands.

(b) As funds and manpower are made available, the Secretary shall ascertain the boundaries of the public lands; provide means of public identification thereof including, where appropriate, signs and maps; and provide State and local governments with data from the inventory for the purpose of planning and regulating the uses of non-Federal lands in proximity of such public lands.

* * *

Appendix D

43 U.S.C. § 1712

§ 1712. Land use plans

(a) Development, maintenance, and revision by Secretary

The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses.

(b) Coordination of plans for National Forest System lands with Indian land use planning and management programs for purposes of development and revision

In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs.

(c) Criteria for development and revision

In the development and revision of land use plans, the Secretary shall —

(1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;

(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;

(3) give priority to the designation and protection of areas of critical environmental concern;

(4) rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;

(5) consider present and potential uses of the public lands;

(6) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;

(7) weigh long-term benefits to the public against short-term benefits;

(8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and

(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended [16 U.S.C.A. § 460*l*-4 et seq.], and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of

land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

(d) Review and inclusion of classified public lands; review of existing land use plans; modification and termination of classifications

Any classification of public lands or any land use plan in effect on October 21, 1976, is subject to review in the land use planning process conducted under this section, and all public lands, regardless of classification, are subject to inclusion in any land use plan developed pursuant to this section. The Secretary may modify or terminate any such classification consistent with such land use plans.

(e) Management decisions for implementation of developed or revised plans

The Secretary may issue management decisions to implement land use plans developed or revised under this section in accordance with the following:

(1) Such decisions, including but not limited to exclusions (that is, total elimination) of one or more of the principal or major uses made by a

management decision shall remain subject to reconsideration, modification, and termination through revision by the Secretary or his delegate, under the provisions of this section, of the land use plan involved.

(2) Any management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more shall be reported by the Secretary to the House of Representatives and the Senate. If within ninety days from the giving of such notice (exclusive of days on which either House has adjourned for more than three consecutive days), the Congress adopts a concurrent resolution of nonapproval of the management decision or action, then the management decision or action shall be promptly terminated by the Secretary. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the management decision or action. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the

committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same management decision or action. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(3) Withdrawals made pursuant to section 1714 of this title may be used in carrying out management decisions, but public lands shall be removed from or restored to the operation of the Mining Law of 1872, as amended (R.S. 2318-2352; 30 U.S.C. 21 et seq.) or transferred to another department, bureau, or agency only by withdrawal action pursuant to section 1714 of this title or other action pursuant to applicable

law: *Provided*, That nothing in this section shall prevent a wholly owned Government corporation from acquiring and holding rights as a citizen under the Mining Law of 1872.

(f) Procedures applicable to formulation of plans and programs for public land management

The Secretary shall allow an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands.

* * *

43 U.S.C. § 1714

§ 1714. Withdrawals of lands

(a) Authorization and limitation; delegation of authority

On and after the effective date of this Act the Secretary is authorized to make, modify, extend, or revoke withdrawals but only in accordance with the provisions and limitations of this section. The Secretary may delegate this withdrawal authority only to individuals in the Office of the Secretary who have been appointed by the President, by and with the advice and consent of the Senate.

Appendix D

(b) Application and procedures applicable subsequent to submission of application

(1) Within thirty days of receipt of an application for withdrawal, and whenever he proposes a withdrawal on his own motion, the Secretary shall publish a notice in the Federal Register stating that the application has been submitted for filing or the proposal has been made and the extent to which the land is to be segregated while the application is being considered by the Secretary. Upon publication of such notice the land shall be segregated from the operation of the public land laws to the extent specified in the notice. The segregative effect of the application shall terminate upon (a) rejection of the application by the Secretary, (b) withdrawal of lands by the Secretary, or (c) the expiration of two years from the date of the notice.

(2) The publication provisions of this subsection are not applicable to withdrawals under subsection (e) hereof.

(c) Congressional approval procedures applicable to withdrawals aggregating five thousand acres or more

(1) On and after October 21, 1976, a withdrawal aggregating five thousand acres or more may be made (or such a withdrawal or any other withdrawal involving in the aggregate five thousand acres or more which terminates after such date of approval may be extended) only for a period of not more than twenty years by the Secretary on his own motion or upon request by a department or agency head. The Secretary shall notify both Houses of Congress of such a withdrawal no later than its effective date and the

withdrawal shall terminate and become ineffective at the end of ninety days (not counting days on which the Senate or the House of Representatives has adjourned for more than three consecutive days) beginning on the day notice of such withdrawal has been submitted to the Senate and the House of Representatives, if the Congress has adopted a concurrent resolution stating that such House does not approve the withdrawal. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the Presidential recommendation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential recommendation. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall

not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(2) With the notices required by subsection (c)(1) of this section and within three months after filing the notice under subsection (e) of this section, the Secretary shall furnish to the committees —

(1) a clear explanation of the proposed use of the land involved which led to the withdrawal;

(2) an inventory and evaluation of the current natural resource uses and values of the site and adjacent public and nonpublic land and how it appears they will be affected by the proposed use, including particularly aspects of use that might cause degradation of the environment, and also the economic impact of the change in use on individuals, local communities, and the Nation;

(3) an identification of present users of the land involved, and how they will be affected by the proposed use;

(4) an analysis of the manner in which existing and potential resource uses are incompatible with or in conflict with the proposed use, together with a statement of the provisions to be made for continuation or termination of existing uses, including an

economic analysis of such continuation or termination;

(5) an analysis of the manner in which such lands will be used in relation to the specific requirements for the proposed use;

(6) a statement as to whether any suitable alternative sites are available (including cost estimates) for the proposed use or for uses such a withdrawal would displace;

(7) a statement of the consultation which has been or will be had with other Federal departments and agencies, with regional, State, and local government bodies, and with other appropriate individuals and groups;

(8) a statement indicating the effect of the proposed uses, if any, on State and local government interests and the regional economy;

(9) a statement of the expected length of time needed for the withdrawal;

(10) the time and place of hearings and of other public involvement concerning such withdrawal;

(11) the place where the records on the withdrawal can be examined by interested parties; and

(12) a report prepared by a qualified mining engineer, engineering geologist, or geologist which shall include but not be limited to information on: general geology, known mineral deposits, past and present mineral production, mining claims, mineral leases, evaluation of future mineral potential, present and potential market demands.

(h) Public hearing required for new withdrawals

All new withdrawals made by the Secretary under this section (except an emergency withdrawal made under subsection (e) of this section) shall be promulgated after an opportunity for a public hearing.

* * *

43 U.S.C. § 1732

§ 1732. Management of use, occupancy, and development of public lands

(a) Multiple use and sustained yield requirements applicable; exception

The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 1712 of this title when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.

Appendix D

(b) Easements, permits, etc., for utilization through habitation, cultivation, and development of small trade or manufacturing concerns; applicable statutory requirements

In managing the public lands, the Secretary shall, subject to this Act and other applicable law and under such terms and conditions as are consistent with such law, regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands, including, but not limited to, long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary may permit Federal departments and agencies to use, occupy, and develop public lands only through rights-of-way under section 1767 of this title, withdrawals under section 1714 of this title, and, where the proposed use and development are similar or closely related to the programs of the Secretary for the public lands involved, cooperative agreements under section 1737(b) of this title: *Provided further*, That nothing in this Act shall be construed as authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands or on lands in the National Forest System and adjacent waters or as enlarging or diminishing the responsibility and authority of the States for management of fish and resident wildlife. However, the Secretary concerned may designate areas of public land and of lands in the National Forest System where, and establish periods when, no hunting or fishing will be permitted for reasons of public safety,

administration, or compliance with provisions of applicable law. Except in emergencies, any regulations of the Secretary concerned relating to hunting and fishing pursuant to this section shall be put into effect only after consultation with the appropriate State fish and game department. Nothing in this Act shall modify or change any provision of Federal law relating to migratory birds or to endangered or threatened species. Except as provided in section 1744, section 1782, and subsection (f) of section 1781 of this title and in the last sentence of this paragraph, no provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress. In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.

(c) Revocation or suspension provision in instrument authorizing use, occupancy or development; violation of provision; procedure applicable

The Secretary shall insert in any instrument providing for the use, occupancy, or development of the public lands a provision authorizing revocation or suspension, after notice and hearing, of such instrument upon a final administrative finding of a violation of any term or condition of the instrument, including, but not limited to, terms and conditions requiring compliance with regulations under Acts applicable to the public lands and compliance with applicable State or Federal air or water quality standard or implementation plan: *Provided*, That such violation

occurred on public lands covered by such instrument and occurred in connection with the exercise of rights and privileges granted by it: *Provided further*, That the Secretary shall terminate any such suspension no later than the date upon which he determines the cause of said violation has been rectified: *Provided further*, That the Secretary may order an immediate temporary suspension prior to a hearing or final administrative finding if he determines that such a suspension is necessary to protect health or safety or the environment: *Provided further*, That, where other applicable law contains specific provisions for suspension, revocation, or cancellation of a permit, license, or other authorization to use, occupy, or develop the public lands, the specific provisions of such law shall prevail.

* * *

43 U.S.C. § 1782

§ 1782. Bureau of Land Management Wilderness Study

(a) Lands subject to review and designation as wilderness

Within fifteen years after October 21, 1976, the Secretary shall review those roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 1711(a) of this title as having wilderness characteristics described in the Wilderness Act of September 3, 1964 (78 Stat. 890; 16 U.S.C. 1131 et seq.) and shall from time to time report to the President his recommendation as to the suitability or

nonsuitability of each such area or island for preservation as wilderness: *Provided*, That prior to any recommendations for the designation of an area as wilderness the Secretary shall cause mineral surveys to be conducted by the Geological Survey and the Bureau of Mines to determine the mineral values, if any, that may be present in such areas: *Provided further*, That the Secretary shall report to the President by July 1, 1980, his recommendations on those areas which the Secretary has prior to November 1, 1975, formally identified as natural or primitive areas. The review required by this subsection shall be conducted in accordance with the procedure specified in section 3(d) of the Wilderness Act [16 U.S.C.A. § 1132(d)].

(b) Presidential recommendation for designation as wilderness

The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendations with respect to designation as wilderness of each such area, together with a map thereof and a definition of its boundaries. Such advice by the President shall be given within two years of the receipt of each report from the Secretary. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress.

(c) Status of lands during period of review and determination

During the period of review of such areas and until Congress has determined otherwise, the Secretary shall

continue to manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness, subject, however, to the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was being conducted on October 21, 1976: *Provided*, That, in managing the public lands the Secretary shall by regulation or otherwise take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection. Unless previously withdrawn from appropriation under the mining laws, such lands shall continue to be subject to such appropriation during the period of review unless withdrawn by the Secretary under the procedures of section 1714 of this title for reasons other than preservation of their wilderness character. Once an area has been designated for preservation as wilderness, the provisions of the Wilderness Act [16 U.S.C.A. § 1131 et seq.] which apply to national forest wilderness areas shall apply with respect to the administration and use of such designated area, including mineral surveys required by section 4(d)(2) of the Wilderness Act [16 U.S.C.A. § 1133(d)(2)], and mineral development, access, exchange of lands, and ingress and egress for mining claimants and occupants.

* * * *

APPENDIX E — LETTER OF THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT DATED JANUARY 8, 1997

United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Colorado State Office
2850 Youngfield Street
Lakewood, Colorado 80215-7076

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JAN 08 1997

CERTIFIED MAIL

E. M. Dauernheim
Exploitation Manager
Rocky Mountain Region
Marathon Oil Company
1501 Stampede Avenue
Cody, Wyoming 82414-4721

Appendix E

Dear Mr. Dauernheim:

We received your letter dated November 15, 1996, in which you protested the Bureau of Land Management (BLM) decision to amend and/or delete the competitive oil and gas lease sale parcels noted above from the competitive sale held November 14, 1996. Lands contained in those parcels are located within an area which has been proposed by the Colorado Environmental Coalition (CEC) and numerous endorsing organizations for wilderness designation in the *Conservationists' Wilderness Proposal for BLM Lands*.

Approximately 800,000 acres in Colorado were designated as wilderness study areas (WSAs) in 1980, following considerable public involvement. Subsequently, with further study and additional public input, about half of these areas were recommended to Congress for designation as wilderness. Section 603(c) of FLPMA provides direction to BLM for management of lands under wilderness review as follows:

During the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands according to his authority under this Act and other applicable law so as not to impair the suitability of such areas for preservation as wilderness. . .

The entire 800,000 acres designated as WSAs are managed accordingly until such time as Congress designates them as wilderness or releases them from further study.

As to areas that have been proposed for wilderness designation by CEC and endorsing organizations, there has been no formal administrative guidance for protection of

wilderness values in non-WSA areas. Because this situation also occurs in a number of other states as well, the Department is developing a policy pertaining to this issue.

In the meantime, BLM will continue to manage these lands in accordance with the land use planning decisions made in Resource Management Plans (RMPs); however, the implementation of oil and gas leasing decisions in these areas will he held in abeyance, pending further evaluation by the Department. Special care will be taken to consider natural values in the development of alternatives and analysis of impacts in our environmental assessments for actions proposed or considered in these areas as well.

Lands located within the proposed areas, whether requested informally or by noncompetitive offer to lease, will not be offered for competitive oil and gas leasing at this time. Parties to this case who have been adversely affected by this decision may appeal to the Interior Board of Land Appeals in accordance with Title 43 of the Code of Federal Regulations, Part 4.400, and enclosed form CSO 1840-6. If an appeal is taken, the notice of appeal must be filed in this office at the above address within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

In the event of appeal, the following parties may be adversely affected:

Norm Mullen
Western Colorado Representative
Colorado Environmental Coalition
Western Colorado Office
Box 2583
Grand Junction, Colorado 81502

Appendix E

Edward B. Zukoski
Staff Attorney
Land and Water Fund
2260 Baseline Road, Suite 200
Boulder, Colorado 80302

Should you have questions concerning this protest response, please contact Kermit Witherbee of this office at (303) 239-3753.

Sincerely,

s/ Robert V. Abbey
Robert V. Abbey
Acting State Director

Enclosure

cc:
Norm Mullen
Western Colorado Representative
Colorado Environmental Coalition
Western Colorado Office
Box 2583
Grand Junction, Colorado 81502

Edward B. Zukoski
Staff Attorney
Land and Water Fund
2260 Baseline Road, Suite 200
Boulder, Colorado 80302